

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION AT DAYTON**

CHARLES KENNEDY,

Plaintiff, : Case No. 3:08-cv-296

-vs- : District Judge Walter Herbert Rice
Magistrate Judge Michael R. Merz

DEPARTMENT OF THE AIR FORCE,

Defendant.

ORDER

At Plaintiff's request (Motion for Reconsideration, Doc. No. 25), the Magistrate Judge on May 15, 2009, granted Plaintiff leave to file an amended complaint, limited as follows:

1. "[O]mitting the First and Fourth Claims for Relief [in the original Complaint] and re-pleading the other claims to overcome, if he can, the deficiencies in the original Complaint."
2. "Plaintiff shall file his amended complaint not later than June 1, 2009."

The most cursory examination of the first Amended Complaint (Doc. No. 28) reveals that it does not comply with the leave granted in that it contains many claims for relief not encompassed in the Complaint¹. Accordingly, the first Amended Complaint (Doc. No. 28) is STRICKEN.

Also shown on the docket is a second Amended Complaint (Doc. No. 31) which was filed July 2, 2009, without leave of Court which is required because Judge Rice set January 15, 2009, as the deadline for amended pleadings (Preliminary Pretrial Conference Order, Doc. No. 9, at ¶ 6.). The second Amended Complaint is also STRICKEN.

¹The Court understands and accepts Plaintiff's explanation (made at Doc. No. 32) of why the document is shown on the docket as filed on June 2, 2009.

Defendant's Motion to Dismiss the first Amended Complaint (Doc. No. 29) is moot in light of the Court's having stricken that document.

There remains pending for decision Plaintiff's Motion for Leave to File Amended Complaint (Doc. No. 30). The Motion is accompanied by a proposed amended complaint which contains many claims not made in the original Complaint and not permitted by the Magistrate Judge's Decision and Order Regarding Motion for Reconsideration. Nor has Plaintiff shown good cause for filing more than six months after the deadline Judge Rice adopted. Accordingly, the Motion for Leave to File an Amended Complaint (Doc. No. 30) is denied².

There are presently no pending motions in this case and the relevant pleading is Plaintiff's Complaint.

Defendant shall file its Answer not later than August 15, 2009.

July 27, 2009.

s/ **Michael R. Merz**

United States Magistrate Judge

²A notation order was entered purporting to grant leave to file the second Amended Complaint. That order is mis-worded and is VACATED. Its only purpose was to instruct Plaintiff that his motion for leave to amend and memorandum in opposition to motion to dismiss had to be filed separately.